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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,654	02/25/2004	James Alfred Hatcher		2917
27885	7590	12/05/2005		
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114				

EXAMINER
HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/786,654

Applicant(s)

HATCHER, JAMES ALFRED

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/15/05 & 9/23/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

The benefit claim filed on September 23, 2005 was not entered because the required reference was not timely filed within the time period set forth in 37 CFR 1.78(a)(2) or (a)(5). If the application is an application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a nonprovisional application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the reference to the prior application must be made during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). If applicant desires the benefit under 35 U.S.C. 119(e) based upon a previously filed application, applicant must file a petition for an unintentionally delayed benefit claim under 37 CFR 1.78(a)(3) or (a)(6). The petition must be accompanied by: (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted); (2) a surcharge under 37 CFR 1.17(t); and (3) a statement that the entire delay between the date the claim was

due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

### *Response to Amendment*

2. The amendment filed September 15, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the drawing of Fig. 2 does not correspond to the drawing of Fig. 2 as originally filed; the Cross Reference to Related Applications (amendment to page 1); the description of Fig. 2 (amendment to page 2); each support being rotatable mounted to the back mat (amendment to page 3); the first U-shaped support “rotatably mounted” to the back mat (claims 9 and 15); the second U-shaped support “rotatably mounted” to the back mat (claims 9 and 15); and the first support mounted “adjacent” the pair of first stretchable bands (claim 18).

Applicant is required to cancel the new matter in the reply to this Office Action.

### *Drawings*

3. The drawings are objected to because in the newly submitted Fig. 2, reference character “50” identifying the section of the first support 52 received by the notches 58 presumably should be changed to --60--, in order to correspond to the amendment to page 3 of the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. Claim 10 is objected to because of the following informalities: in claim 10, “said second bar support” presumably refers to the second generally U-shaped support. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 9-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not describe the second generally U-shaped support “rotatably mounted to said relatively rigid structure of said back mat”; or that the first generally U-shaped support is “rotatably” mounted to the relatively rigid structure of the back mat. The specification does not describe either limitation and the drawings do not make it clear that these limitations exist. From the drawings as originally filed, the second U-shaped support could be rigidly mounted to the bottom mat or to the back mat.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by *Siaperas* (US Pat Pub. 2001/0027151 A1). *Siaperas*’151 discloses a portable exerciser comprising a mat having a first component 24 and a second component 26 that can be collapsed into a smaller arrangement (Fig. 8) and wherein at least one of the components includes at least one stretchable band 102 that can be used by an individual for exercising. An adjustment mechanism (Fig. 3) is mounted

to at least one of the first and second components and includes a first bar support 50 and a second bar support having a plurality of engagement members 52 adapted to receive a section of the first bar support 50 wherein one of the first and second components can be selectively angularly adjusted and maintained relative to the other component.

The stretchable band 102 is detachably connected to the at least one component of the mat. A handle 104 is detachably connected to one end of the stretchable band 102. The adjustment mechanism orients and maintains one of the first and second components at an angle between 0 degrees and 180 degrees relative to the other component. The first component 24 is hingedly secured to the second component 26. The at least one stretchable band 102 is made of a resilient elastic material and there may be a plurality of stretchable bands having different resistances to extensibility (col. 7, lines 59-67).

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Wilkinson* (US Pat. 5,007,632), *Paris* (US Pat. 5,125,650), *Whitcomb* (US Pat. 5,906,566), *Siaperas* (US Pat. 6,634,998 B2) and *Van Straaten* (EP 0 542 441 A1) disclose exercise devices having features relevant to the claimed invention.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

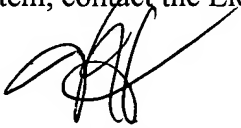
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

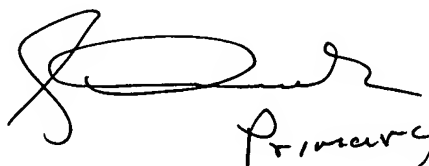
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Victor K. Hwang  
November 29, 2005

  
Primary